Appendix H

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leading up to its bankruptcy. The US attorney's office in the eastern district of Michigan also launched an inquiry involving FBI investigators. The FBI in Detroit confirmed vesterday that it was continuing to look into the company, but would not comment further

Kmart's accounting probe was

tinues, and Kmart in May suspended severance pay to a tinues. group of former executives pending the probe's outcome.

Executive pay, including retention loans totalling close to including \$30m to about 25 executives. IS understood to have become one of the focuses of both internal and

rest in stock - and a \$2m bonus in | By Jeremy Grant in Chicago 2001. When he was fired in March this year, he received a \$9.5m severance package including forgiveness of an earlier 15m retention

Mr Schwartz received a total of \$10.8m in his 16 months at Kmart. including a \$3m retention loan

Insider trading investigation becomes 'he said/he said' game

The ImClone probe has pitted two men against each other, says Joshua Chaffin

he investigation into insider trading at imClone has largely devolved into a "he said he ording to said" affair pitting Merrill Lynch stockbroker Peter Bacanovic against his assistant Douglas Faneuil.

Authorities appear to be relying on Mr Faneuil's version of events as they have ratcheted up their investigation into suspicious stock sales at the biotechnology company last December. They obtained an indict-

ment against Sam Waksal imClone founder, last week and now have Mr Bacanovic and Martha Stewart, his prized client, in their sights. However, the Merrill bro ker is likely to blame Mr Faneuil for passing inappropriate information about ImClone to Ms Stewart without his knowledge, according to people familiar with his defence. Mr Bacanovic also likely to charge that Mr Faneuil concocted a story for federal prosecutors in an effort to shield himself from possible criminal charges.

Mr Bacanovic's defence may not hold up as he and Ms Stewart try to extricate themselves from the most high-profile insider trading scandal in a decade.

Mr Waksal was arrested in June for allegedly trying to sell his own ImClone shares and also tipping off his family members, the day before the Food and Drug Administration rejected Erbitux, the company's cancer drug, on December 28. Authorities then began to probe whether Ms Stewart relied on information when she unloaded her ImCione stake the same day. Mr Waksal was an old friend and Mr Bacanovic served as a broker for both.

Ms Stewart has denied any wrongdoing and said that she had a standing agree-ment with Mr Bacanovic to sell the shares if they fell below \$60. But suspicions were aroused. First, the two clashed in their recollections of when the agreement was struck. She said November; he said late December. Then Merrill had no record of a formal stop-loss order entered into its computers.

The heaviest blow to Ms Stewart and Mr Bacanovic came from Mr Faneuil. After backing his boss during questioning in January, he later approached Merrill to alter his testimony.

Even if the government fails to prove its charges of insider trading, they may charge Ms Stewart and Mr Bacanovic with obstruction of justice.

According to people familiar with Mr Bacanovic's defence, the broker was sur-



prised in November when Ms Stewart transferred some ImClone shares from an account at Morgan Stanley to her portfolio at Merrill.

Mr Bacanovic urged Ms Stewart to get out of the stock. He had sold all but one of his clients' ImClone shares after an October tender offer from Bristol-Myers Squibb. which had just agreed with lmClone to jointly market Erbitux.

Ms Stewart's portfolio.

below \$60, these people say

Mr Faneuil would have unaware arrangement because he was on vacation when the conversation took place. Mr Faneuil's lawyer refused to comment

More germane to the case is Mr Bacanovic's version of events on December 27, the day the controversial sale took place. With Mr Bacanovic on vacation in Miami. Mr Faneuil was in charge.

Mr Waksal's daughter called that morning to sell her shares at 9:17am. Before the market opened at 9:30am. her father's accountant called and sent a fax requesting the same. At 9:51am Mr Bacanovic and Mr Faneuil spoke for four minutes, according to phone records Merrill handed over to the government. Between 10am and 11am, Mr Faneuil called Ms Stewart and left a message with her secretary stating that Mr Bacanovic believed ImClone was going to trade down that day

from her office until she landed in San Antonio that afternoon to refuel. She later called Mr Bacanovic's office spoke with Mr Faneuil and the trade was executed that afternoon. Mr Faneuil, has told prosecutors that he disclosed the Waksals' sales to Ms Stewart under orders from Mr Bacanovic, according to press reports

People close to Mr Bacanovic's defence claim he instructed Mr Faneuil to tell Ms Stewart to sell based solely on ImClone's falling stock price. "Peter has been in this business for 10 years," a friend of Mr Bacanovic's said. "There's no way he would tell someone what

reports are accurate, it would not constitute insider is hardly criminal.

Ford was adamant last month that it would not launch a "fire sale" on any of the businesses earmarked for the disposal of non-corassets expected to raise \$1ph this year

This included Kwik-Fit the European exhaust and maintenance commany that the world's second largest carmaker bought for \$100 m

But there was no trace from in its announcement vesterday that it had agree. to sell Kwik-Fit to CVC Capital Partners for his? £30m (\$505m) "We think the prinreflects what is the present market value of the bus ness Ford suin. When Ford bought the

business from Sir Farmer, the Scottish bus nessman who founded the Kwik-Fit tyres and exhausts chain in Edinburgh in the early 1970s, it clearly felgrowth prospects were good

But with the global ecnomic downturn, such hopes have been dashed. Ford said it would take an after-tax charge of about \$500m in the third quarter of 2002 related to the sale. The company is now focused on the far larger task of restoring its entire business to sustained profitability

The sale of Kwik-Fit is a small milestone in that process. It puts Ford within stri king distance of achieving its target of raising \$1bn in cash from asset sales

The fact that it has pulled the sale of the much smaller Hertz Equipment Rental Corporation shows that Ford's resources are now likely to be better used accelerating the company's restructuring

The task is to see plans to pump of products to North products in North Andread and reach years calls a product

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Disney to NYSE gui

Walt Disney, which has long faced criticism over its corporate governance, has been forced to admit it employed immediate family members of three suppos-edly "independent" directors

The US entertainment and media group said in a filing with the Securities and **Exchange Commission that** three directors - Stanley Gold. Raymond Watson and Reveta Bowers - had children employed by the company during the past year.

In recent corporate governance recommendations, the York Stock Exchange said a director should not be considered independent if a family member had worked for the company in the past five years.

Disney said it was considering "appropriate steps" to bring its board into line with the recommendations. "These steps will include a reduction in the board's size and reorganisation and reduction in size of board committees," the group said

The adoption of the NYSE recommendations would mean that the number of independent directors on Disney's 16-man board nominations committee as a result of the move. Mr Gold is also a member of the compensation and executive performance committees.

Raymond Watson, a longtime supporter of Mr Eisner, would be forced to surrender his membership of the audit and compensation committees.

Reveta Bowers would also have to give up her posts on the audit and compensation committees.

Last year Craig Bowers worked for Disney's internet operations, earning \$81,863, though he is no longer employed by the group. Jennifer Gold worked for its consumer products division, earning \$85,111. David Watson worked for the Disney Channel, earning \$152,608.

discussed ImClone again during a phone conversation late on December 21. The occasion was an end of year review of

This time, Mr Bacanovic prevailed. With ImClone sagging, he convinced his client in a verbal agreement to sell her stake if the shares fell

> Ms Stewart was flying to Mexico and did not hear

another client was doing However, even if the press

trading: although passing on information about client sales might be unethical, it

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I SEMICONDUCTORS APPLIED MATERIALS SET TO REPORT FALLING MARKET DEMAND

Financial Times: August 13, 2002